

Tucson Electric Power Company



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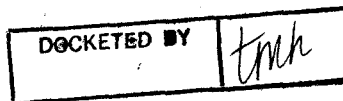
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1200 West Washington Street
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Arizona Corporation Commission
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Re: Tucson Electric Power Company's Comments on Staff's First Draft of
Proposed Revisions of the Retail Electric Competition Rules
Docket No. RE-00000-94-0165

Dear Mr. Williamson:

Tucson Electric Power Company ("TEP" or "Company") is in receipt of the First Draft of the Proposed Revisions of the Retail Electric Competition Rules dated June 25, 1998 ("Proposed Revisions") and appreciates the opportunity to provide comments in respect thereof. Given the time constraints, these comments do not represent an exhaustive analysis of the Proposed Revisions, but rather a general overview of what the Company considers the most critical issues. TEP reserves the right to further analyze the issues and respond more fully when such analysis is completed. TEP further incorporates by reference its other comments filed in this Docket with respect to the issues set forth in the Proposed Revisions and urges Staff to review those comments.

The format for TEP's comments will track the rules as set forth in the Proposed Revisions. The rule number and name will be cited, as well as each section or paragraph. Where appropriate, the Company has provided suggested language for each section. The fact that the Company has not commented on a particular section should not be construed as the Company's acceptance or agreement with such section.

General Comments

TEP commends Staff for taking the initiative to redefine and further clarify the principles governing the introduction of retail electric competition in Arizona. The Commission, however, should review the various provisions of the Proposed Revisions with regard to the financial and operational burdens they will impose on the Affected Utilities and whether or not it is even

possible to implement such provisions in the short time frames contemplated. Moreover, many of the Proposed Revisions provide new Energy Service Providers ("ESPs") an unfair market advantage in that the Rules impose a substantial degree of additional regulation on the Affected Utilities and their affiliates, while not placing similar restrictions on the new market entrants.

The Commission has been regulating the Affected Utilities for many years under traditional regulation. Yet, the Proposed Revisions focus heavily on re-regulating Affected Utilities while ignoring critical public interest considerations regarding certification and regulation of new ESPs. In its zeal to bring competition to Arizona, the Commission should remember that, unlike the Affected Utilities, new ESPs have everything to gain and very little to lose. Given the Affected Utilities' experience in providing electric services as vertically integrated utilities to Arizona customers for many years, the Company believes that a greater degree of deference should be given to the Affected Utilities' operational, reliability and financial concerns, as opposed to the numerous requirements that have been urged by specious interests without regard to feasibility and cost. Finally, the Proposed Revisions impose financial responsibilities of restructuring on Affected Utility shareholders. TEP believes that the cost of *Commission mandated* requirements should be borne by those entities that are benefiting from restructuring and not by shareholders.

R14-2-1601. Definitions.

9. and 30. These definitions do not comply with TEP's FERC Open Access Transmission Tariff ("OATT"). The split between transmission and distribution is unique to each company based upon FERC definitional criteria set forth in Order 888. For TEP's OATT, 69 kV and above is regulated as transmission and 69 kV and below is distribution for TEP. The Commission should, where possible, correlate its requirements with FERC. Therefore, TEP suggests the following definitions:

9. "Distribution Primary Voltage" is voltage as defined under the Affected Utility's FERC Open Access Transmission Tariff, except for Metering Service Providers, for which "Distribution Primary Voltage" is voltage at or above 600 volts (600V) through and including 25 kV.
30. "Transmission Primary Voltage" is defined under the Affected Utility's FERC Open Access Transmission Tariff.

12. This should include ("ESP") after the term "Energy Service Provider."

R14-2-1602. Filing of Tariff by Affected Utilities.

Although the Affected Utilities have already complied with this provision, the Proposed Revisions, as well as the recently adopted stranded cost order, may require amendments to this filing, as well as additional tariff filings.

R14-2-1603. Certificates of Convenience and Necessity.

A. TEP believes that the phrase "or self aggregation" should be deleted from the last sentence of this Paragraph, as it is not a competitive function. TEP also objects to the deletion of the last sentence regarding application for a CC&N. TEP currently has a CC&N to provide generation, transmission and distribution services in its service territory. TEP will still be required to provide such services during the transition period, as well as into the future through Standard Offer. To the extent TEP provides competitive services through its affiliates, such affiliates should be required to apply for a CC&N. However, the Affected Utility should not be required to reapply for a CC&N to provide services within its service territory. It is simply unnecessary.

E. In the last sentence, after the word "shall" insert "be allowed to enter into transactions with Arizona retail customers for terms no greater than the term of their interim approval and ..."

F. Section 3 provides that a "service acquisition agreement" must be entered into with the UDC. There is no discussion of the terms and conditions to be included in the agreement. This is a critical component of the competitive process in that, without such agreements, there are likely to be a significant number of disputes between the UDCs and the ESPs, such as credit arrangements or other credit support issues.

R14-2-1604. Competitive Phases.

General. TEP believes that if customers want to access the competitive marketplace, they should be required to have real-time meters. TEP does not believe that load profiling is appropriate. However, to the extent load profiling is required to be used, it should only be used during the transition period. It should also be noted that the concept of load profiling is inconsistent with the billing requirement to bill on actual usage.

B. After the first sentence, add "Self-Aggregation is also allowed pursuant to the minimum and combined load demands set forth in this Rule."

C. TEP opposes the residential phase-in program set forth in Paragraph C. Under the Proposed Revisions, *all* customers will be afforded retail access on January 1, 2001. The Proposed Revisions already contain a very ambitious agenda for the introduction of competition on January 1, 1999 for customers of 1 MW and above, as well as those 40 kW customers that aggregate. TEP believes that it needs time to develop the systems and load profiles, as well as to procure and install the real time meters, that will be necessary to include residential customers. Two additional years will not only enable the Affected Utilities to accomplish this, but to gain actual experience. Additionally, as an offset, Paragraph D is intended to provide rate reductions to such customers during the two-year period. As residential customers have not been shown to be terribly interested in receiving competitive generation supply in those jurisdictions that have retail access, and given the amount of work to be done in the next two years, the Commission

should not further complicate this process with a residential phase-in program to start contemporaneously with other retail access.

If, however, the Commission is determined to have some residential retail access prior to 2001, TEP strongly suggests that the phase-in not start until January 1, 2000 for the following reasons: (1) it will give the Affected Utilities, the Commission and other parties one full year of retail access to gain some experience, and (2) in the interim, the Affected Utilities could institute a study on residential customers using a small number of real-time meters during that year to create accurate load profiles. Based upon experience in California, TEP is opposed to load profiling as it often leaves the incumbent utility with the customers with the worst load profiles. A January 1, 2000 start date would allow time to accurately develop load profiles and to develop the necessary billing systems to be implemented.

Another simplifying alternative for a residential phase-in could be to continue metering and billing as monopoly services during the transition period. This would eliminate a significant portion of the technical difficulties with residential phase-in and aggregation.

Finally, regardless of when the residential phase-in will start, TEP requests that it not be in the summer months because of the peak demand in the summer and the inefficiencies of load profiling.

F. The last sentence incorrectly references the Rules and should be changed to reflect the Proposed Revisions.

R14-2-1606. Services Required to Be Made Available by Affected Utilities.

A. The current version of the Proposed Revisions creates confusion as to whether an Affected Utility or a UDC can provide metering, meter reading, billing and customer information services. The Proposed Revision clearly states that these services are competitive and an Affected Utility or UDC cannot provide competitive services. However, the Proposed Revision also states that the "Affected Utility shall make available to all consumers in its service area Standard Offer bundled generation, transmission, ancillary, distribution and other necessary services at regulated rates." Therefore, a question exists as to whether the UDC must acquire these services for its Standard Offer customers from the market. TEP suggests that Paragraph A should be changed to clarify these issues as follows:

- A. The Affected Utilities shall be responsible to provide Standard Offer Services until January 1, 2001. Thereafter, UDCs will provide Standard Offer Services. Such services shall include the following:
 - 1. Generation and or Purchased Power Costs
 - 2. Transmission
 - 3. Ancillary Services
 - 4. Distribution
 - 5. Metering and Meter Reading

- 6. Billing
- 7. Customer Information

C. *Standard Offer Tariffs.* TEP is concerned that the Proposed Revisions do not allow the UDC or Affected Utility to recover costs incurred during the transition to a competitive market. All customers must pay for the transition costs to competition. TEP suggests the following changes to allow for proper cost recovery:

C.2. Affected Utilities may file proposed revisions to such rates. It is the expectation of the Commission that the rates for Standard Offer Service will not increase, relative to existing rates. **However, if as a result of implementing competition there are increased transaction costs, the UDC may file a tariff to recover these additional costs.** Any rate increase proposed by an Affected Utility for Standard Offer Service must be fully justified through a rate case proceeding.

F. In order to secure purchased power, the UDC may have to create a new department or contract this work to a power marketer. The Proposed Revision should take into account the cost of providing purchased power service and whether the UDC outsources this requirement or creates its own internal department. TEP proposes the following change:

F. After January 1, 2001, power will be purchased by the UDC to serve Standard Offer customers pursuant to mechanisms approved by the Commission. The UDC will be required to file an initial power purchase plan on or before September 1, 2000.

G. The UDC should always have access to customer data from the ESP since it will be responsible for calculating all wires-related charges.

R14-2-1607. Recovery of Stranded Cost of Affected Utilities.

A. TEP believes this should simply state that "Affected Utilities shall take reasonable cost-effective measures to mitigate or offset stranded costs." The word "every" should be deleted because it is too subjective. The rest of the paragraph should be deleted because wholesale sales are non-jurisdictional and should not be used to reduce stranded costs. The Commission currently allocates costs to the wholesale jurisdiction, so there is no reason to include FERC jurisdictional sales for retail stranded cost mitigation purposes. Finally, as the Proposed Revisions require the Affected Utilities to put all competitive services in separate affiliates, it will not be possible to mitigate by offering a wider scope of services for profit. All mitigation will have to come from the Affected Utility's ability to reduce costs internally.

F. TEP disagrees with the self-generation exclusion set forth in Paragraph F. If the Rule is not modified to ensure that customers who choose to self-generate are responsible for stranded costs just as any other existing customer, a potentially large and improper economic incentive for self-generation will be created. This is due to the ability of such customers to avoid

stranded cost charges. The result of the Rule as written will be to significantly increase uneconomic self-generation while increasing stranded cost burdens on customers who purchase their power in the competitive marketplace. TEP proposes the following change:

F. A Competitive Transition Charge may be assessed only from customer purchases made in the competitive market using the provisions of this Article. Any reduction in electricity purchases from an Affected Utility resulting from demand-side management or the use of renewable resources shall not be used to calculate or recover any Stranded Cost from a customer.

R14-2-1608. System Benefits Charges.

D. The cite should read "R14-2-1606(J)" and not "(I)."

R14-2-1609. Solar Portfolio Standard.

General. A UDC is also an ESP; it should be exempted from this provision to the extent that the UDC does not provide competitive generation services. For example, if TEP was to divest of its generation and was only a UDC, by virtue of the requirement to provide Standard Offer Service and procure generation, it would be required to comply with this Rule. This Rule should be for ESPs providing generation.

C.4. "Solar electric generator" could be read to apply to all generators, including central solar thermal or photovoltaic plants that are not distributed to customer sites. TEP suggests changing this to "Any *distributed* electric generator."

E. The 30 cents per kWh penalty should be paid directly to the Affected Utility or UDC and the investment thereof monitored by the Commission. Otherwise, all ESPs will be required to satisfy the requirement on their own which is likely to be inefficient and difficult to monitor.

J. The sentence that reads "In order to avoid double-counting of the same equipment, solar electric generators that are sold to other Electric Service Providers..." should be changed to, "In order to avoid double-counting of the same equipment, solar electric generators that are *used by* Electric Service Providers...." This change is suggested because the business arrangement could be something other than a sale (e.g., equipment could be leased) and an ESP could also own the manufacturing.

Additional Comments. TEP believes that the Commission should retain flexibility to take into account all facts and circumstances and to make appropriate adjustments to the standard as needed. Therefore, the Company believes it is unnecessary and potentially harmful, to change the existing permissive language in the Rule to mandatory language or anything that decreases the Commission's flexibility in the future. For example, B.2. changes a "may" to a "shall" on imposing a penalty and also eliminates "change" in favor of "increase." E. eliminates "up to 30 cents" and mandates 30 cents. Additionally, TEP believes line 2 of J. should read "ESP or its

affiliate" as in most situations, including TEP's, the manufacturing plant would be separated into an affiliate and not contained in the ESP itself. This is also consistent with the Proposed Revisions on separation of competitive and other services from the Affected Utility or UDC into another corporate entity. Finally, the last sentence of K. is missing the word "may."

R14-2-1610. Transmission and Distribution Access.

General. TEP believes this Rule should state that the overriding objective should be to maintain the reliability and the safety of the transmission and distribution systems.

A. TEP believes that the last sentence should be eliminated. This issue has been a controversial issue that needs further review and legal analysis. It is not clear whether the Commission has the jurisdiction to assign rights on the transmission system on a pro rata basis or any other basis.

F. The last sentence states that "proposed rates for the recovery of such [ISA/ISO] costs shall be filed with the FERC and the Commission." Since the first sentence of the paragraph indicates the Commission's intent to allow recovery of prudently incurred costs in establishment and operation of the ISA/ISO, the Paragraph should expressly state that, if FERC does not approve recovery, the Commission will allow recovery.

I. TEP believes that this paragraph needs further discussion and comment and should be eliminated. First, to the extent the Commission examines must run generation units in a distribution context, it will do so when examining the unbundled distribution tariff. Second, there is a FERC jurisdictional question with respect to the phrase "regulate the price of power from these units." Third, to the extent the Commission is encouraging divestiture of generation assets, this phrase could negatively affect the market price offered in an auction process of such units. To the extent this happens and depresses the value of the asset, it will increase stranded costs. Finally, the Commission will have oversight authority of the contracts for must run generation in the context of the sale of the assets, as well as through rate cases for the UDC.

R14-2-1612. Rates.

The lettering for the paragraphs is incorrect.

R14-2-1613. Service Quality, Consumer Protection, Safety and Billing Requirements.

General. It is unclear whether (1) the UDC is required to collect the ESP's billable charges from the ESP for presentation on the UDC's bill, or (2) the UDC is required to calculate the ESP's billable charge, on behalf of the ESP, for presentation on the bill. Significant time, money and resources will need to be expended by TEP if it is required to calculate any price structure that an ESP may bill for, including real-time pricing. TEP believes it will take a minimum of 12 months and several million dollars of new computer systems.

C. and D. The word "provider(s)" should be "ESPs."

C. The provision should state that the "ESP shall be responsible for maintaining the written notification."

D. The phrase "a large portion of their system" at the end of the paragraph needs further definition.

M. Unbundled Billing Elements.

Standard Offer Service Customers. The billing for Standard Offer Service customers can be accommodated by TEP's existing Customer Information System ("CIS"). The CIS's ability to provide this support is based upon: (1) current tariff rates for generation, and (2) all other costs (i.e., CTC, fuel or purchase adjustor, distribution services, transmission service, metering services, meter reading services, billing and collection, and System Benefits charges) being calculated as a flat charge or as a factor of consumption.

Competitive Electric Service Customers. The capacity to calculate charges for competitive electric services on behalf of ESPs is not currently available within TEP's billing resources. The means to uniquely bill for services provided during each meter read interval will add considerable complexity to the billing procedures and need to be supported. Significant time and effort is required on TEP's part to provide the features needed. While TEP will strive to make this service available as soon as possible, it is not anticipated these services will be available on January 1, 1999.

R14-2-1616. Separation of Monopoly and Competitive Generation Assets.

A. TEP may not be able to comply with the asset separation requirements due to covenants and other restrictions in its leases and other credit obligations. This issue for TEP has been raised in most of the filings made with the Commission dealing with this issue. Further, this requirement may constitute an infringement by the Commission on management's authority in violation of current case law.

R14-2-1617. Electric Affiliate Transaction Rules.

General. In November 1997, the Commission approved cost allocation procedures for shared resources, such as payroll system, accounting department personnel, etc., between TEP and its commonly controlled affiliates, as a part of the approval of the formation of TEP's holding company. The Proposed Revisions are in conflict with many such procedures. Competitive companies, including likely new entrants to this market, share administrative costs between business units as a common practice without hindering competition. The Rules should grandfather cost allocation arrangements which have been previously approved by the Commission.

The Proposed Revisions are also silent as to who bears the costs of complying with these Rules. TEP believes that any costs mandated by the Commission associated with implementing

competition (including these Rules) should be borne by customers, since they are the ones receiving the benefits of competition. These costs would include, but not be limited to, those related to installing new computer systems, capital expenditures to assure reliability, capital expenditures to implement any pilot program, system control room expenses, metering and customer information systems.

TEP believes that this Rule requires modification and, because of its significant impact on the corporate structure of the Company, would like the opportunity for further comment and discussion. TEP recommends not adopting this Rule at this time.

A.1. TEP believes that this section can be eliminated because the provisions of A.2. contain all of the necessary safeguards. It is also unclear as to its purpose in light of A.2.

A.6. TEP believes there is no purpose to be served by this provision except to disadvantage smaller corporate entities such as TEP. It makes a presumption that separation is appropriate in all instances when the Commission has always had the ability to review affiliate relationships under the Affiliate Rules. There is no practical reason to limit board and officer roles to two entities when by serving on one entity (such as the holding company) gives effective oversight and control over all entities. What this does, however, is to deny day-to-day expertise necessary to efficiently carry out responsibilities to different entities. So long as proper allocation and conflict policies are in effect, this provision is unnecessary. At the very least, the Rule should provide for a waiver by the Commission upon a demonstration by the Affected Utility that appropriate procedures have been implemented that ensure that the utilization of common board members and corporate officers does not allow for the sharing of confidential information with affiliates or otherwise circumvent the purpose of this Rule.

A.7.a. This provision is the opposite of the condition imposed by the Commission in approving TEP's holding company. If the Commission is concerned about activities between affiliated entities providing undue advantage to one party or another, it could require that all material transactions between affiliated entities be recorded at fair market value.

B. This Paragraph is missing or the Rule needs to be re-lettered.

C.2. As discussed earlier, shareholders should not bear this expense. This is a Commission mandated cost that is designed to benefit competitors and customers.

D.1. This is another example of something that applies to Affected Utilities that should also apply to new market entrants. Otherwise, they are being provided a competitive advantage.

R14-2-1618. Information Disclosure Label.

TEP currently does not possess the means necessary to automatically produce the Information Disclosure Label outlined in the Proposed Revisions. Significant time, money and resources will need to be expended in order to accomplish the requirement. TEP suggests that

this requirement be deleted from the Proposed Revisions at this time so that further comment and study can be made.

The creation of an Information Disclosure Label represents an onerous task. Depending upon the level of precision required, the following activities may need to occur:

1. All energy acquisition transactions (scheduled and spot) and corresponding prices be recorded for the intervals in which energy is provided to a customer.
2. All sources of energy be monitored and recorded for the intervals in which energy is used by a customer.
3. All fuel mixes and emission characteristics be monitored and recorded for the intervals in which energy is used by a customer.
4. All line losses be monitored and recorded for the interval in which energy is used by a customer.
5. All load serving entities monitor and record energy used on its own system for the interval in which energy is used by a customer.
6. The necessary information be captured and provided by the entities providing the service.

TEP estimates it will require a minimum of 18 months and several million dollars to provide the Information Disclosure Label as outlined. TEP believes it can provide a more general information brochure outlining TEP's performance in several of the areas requested by January 1, 1999. The brochure would provide an encapsulation of the criteria outlined, for TEP as a whole, based upon a historical perspective.

R14-2-210. Billing and Collection.

General. To the extent that billing and collection services are competitive, there is no need for regulation. For example, terms for levelized billing and deferred payments should be between the customer and the supplier. To the extent the customer is unhappy with the terms or service, he/she could switch. However, if these services are to remain under regulation, they should stay with the UDC.

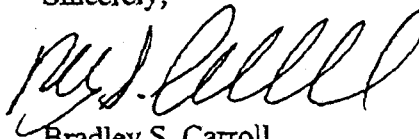
TEP believes that there should be some limit as to how many times a customer may switch from Standard Offer Service per year. There should be some limit as to how many ESPs the customer switches to or from. It would be unreasonably difficult to perform system planning and to purchase power if the customer base is switching back and forth from Standard Offer Services to market without limitation as to frequency of such changes. This would encourage customers to "game" the system depending on market prices, seasonal rates, time-of-use rates and the purchased power pass through to customers. It will create a constant need to amend Standard Offer tariffs in response to market gaming. Further, as there are administrative costs associated with a customer switching, a nominal charge to cover the cost should be permitted.

TEP further suggests that this be limited to every third billing cycle. Switching should only be allowed on regular metering dates to minimize the cost of facilitating switching. The experience in California has shown that it takes 60 days just to perform the process.

Conclusion

If it is Staff's intention to adopt the Proposed Revisions on an emergency basis, given the immediate financial and operational impact such rules will have on the Affected Utilities, the Commission should only adopt those provisions necessary to ensure compliance with the January 1, 1999 start date. Those Proposed Revisions not crucial to the start date should not be adopted at this time to allow for further discussion and comment before Affected Utilities are required to make significant financial, corporate, restructuring and resource expenditures. Staff should also consider repealing, suspending or modifying other rules that are in conflict with these Rules such as the Resource Planning Rules and the Affiliate Interest Rules. Representatives of the Company would be happy to meet with Staff prior to the finalization of the Proposed Revisions to discuss any of the issues raised in these comments.

Sincerely,



Bradley S. Carroll
Counsel, Regulatory Affairs

BSC/kj

cc: Docket Control (Original and 10 copies)